

**Affidavit of Laurence V. Cronin**

**Exhibit A**

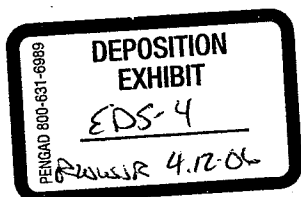
**EDS**

**Delaware Healthcare Services**

**Account Handbook**



■ ■ ■ The recognized global leader in ensuring clients achieve superior value in the digital economy.



EDS II 00001

## **EDS - Our History**

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When EDS started in 1962, people didn't know or care much about computers. They were just beginning to see that the information amassed and generated by computers was the future of commerce. Nearly 40 years later, the world has caught on to what we meant when we said long ago, "Without information, nothing happens".

Even in the beginning, we understood the promise of managing information to improve our clients' businesses. In the 1960s, we did not necessarily foresee digital supply chain management or online grocery shopping. We did foresee that information technology would fundamentally change people's lives and the way enterprises and governments work. We evolved from this idea — with one man, one \$1,000 check and one extraordinary vision — to a \$19.2 billion, global business leader with about 120,000 people who help clients solve their toughest business challenges.

### **Winning in the Digital Economy**

In today's digital economy, companies that understand when and how to apply technology to solve critical business imperatives win. From our inception, we have understood how to help companies manage their data. EDS established the information technology outsourcing industry and established the trust of our clients by pioneering the systems management and integration industries in the 1960s and 1970s. Many of these companies are still EDS clients. We built the world's largest private voice and data network in the 1980s, connecting disparate islands of data to create a new world of information that expanded beyond borders for our clients.

Today, EDS offers sophisticated Web, mobile or storage-hosting services for hundreds of enterprises worldwide, helping businesses embrace speed and innovate quickly in the digital environment. And by collaborating in new ways with suppliers, clients and even competitors, we have used technology to create new offerings, new insight and new opportunities on every continent. Every day, we are engaged in the global, ubiquitous transmission, processing, distribution and storage of information that make the digital economy possible.

### **Helping our Clients Succeed**

As the digital economy emerged like a bullet train, we, and the thousands of clients we serve, were already on track. We did not race to implement a global infrastructure. We already had one. We did not frantically create data centers. We had capacity. We did not scramble to fend off hackers. We had already developed one of the most comprehensive information assurance methodologies including privacy and security in the world. We did not have to ramp up to embrace e-business. We were there. And today, we have gone beyond "e" to help our clients transform their businesses to compete effectively in the digital economy.

## Delaware Healthcare Services

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### Our Account

The EDS Delaware Healthcare Services Account ("Account") is the fiscal agent for the Delaware Medical Assistance Program (DMAP).

Through its two contracts, Delaware Healthcare Services and Health Benefit Manager (HBM), the Delaware Account team supports the following programs:

- The Delaware Medical Assistance Program (DMAP)
- Health Benefits Manager (HBM)
- Delaware Healthy Children Program (DHCP)
- Diamond State Partners (DSP)
- Delaware Prescription Assistance Program (DPAP)

The Account staff currently totals approximately 85 employees, which includes managers, supervisors, pharmacists, provider and client service representatives, financial staff, technical staff, and specialized support clerks. The account is divided into several departments such as document control, claims processing, client/provider services and systems.

### Contract Terms

Our relationship with the state of Delaware began in 1989 and has continued as described below:

Original MMIS Contract-	November 1, 1989 to June 30, 1998
MMIS Contract Extensions	July 1, 1998 to June 30, 2002
Original HBM Contract	July 1, 1996 to June 30, 1997
HBM Contract Extensions	July 1, 1997 to June 30, 2004
New MMIS Contract	July 1, 2002 to June 30, 2012
New HBM Contract	July 1, 2004 to June 30, 2005
Original DSP Contract	July 1, 2002 to June 30, 2003
DSP Contract Extensions	July 1, 2004 to June 30, 2004
New DSP Contract	July 1, 2004 to June 30, 2005

**Affidavit of Laurence V. Cronin**

**Exhibit B**

Lance Rogers

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

HESTAL LIPSCOMB,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. --
	)	05-477 SLR
ELECTRONIC DATA SYSTEMS	)	
CORPORATION, a Delaware	)	
Corporation,	)	
	)	
Defendant.	)	

Deposition of LANCE ROGERS taken pursuant to notice at the offices of Smith, Katzenstein & Furlow LLP, 800 Delaware Avenue, 7th Floor, Wilmington, Delaware, beginning at 3:05 p.m. on Wednesday, April 12, 2006, before Robert Wayne Wilcox, Jr., Court Reporter and Notary Public.

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3 (Pages 6 to 9)

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1 position?

2 A. I was the implementation manager.

3 Q. Okay. What does the implementation manager  
4 do?5 A. We implement the medical management  
6 information system for the State of Delaware.7 Q. Okay. In that role did you have final  
8 authority as to hiring and firing of employees at the EDS  
9 Delaware facility?10 A. Those employees related to the systems  
11 engineering group?

12 Q. Yes.

13 A. Yes.

14 Q. Okay.

15 A. Are you referring to as client delivery  
16 executive or implementation manager?

17 Q. Implementation manager.

18 A. My answer is correct.

19 Q. Okay. How many people reported to you in July  
20 2002? Not direct reports but --

21 A. Approximately 19.

22 Q. Nineteen people?

23 A. Yes.

24 Q. How many people worked at the facility?

Page 8

1 Q. Okay. Now, in July of 2004, in what

2 situations were you involved in personnel matters

3 involving the people who ultimately reported to you?

4 A. Personnel matters related to Hestel Lipscomb  
5 and Barbara Jackson. I was involved in a personnel  
6 matter related to Roberta McWilliams with Kay Wasno. And  
7 potentially -- I don't recall the rest.

8 Q. Okay. They were both in July of 2004.

9 Correct?

10 A. They were over periods of time leading up to  
11 July of '04, yes.12 Q. Okay. Did you make the decision to terminate  
13 any employees other than Roberta McWilliams and Hestel  
14 Lipscomb?

15 A. Not that I recall during that time frame.

16 Q. All right. What time frame are you using  
17 here?

18 A. July of '04.

19 Q. What about during the entire time that you  
20 held that particular position?21 A. Throughout my various leadership positions  
22 with EDS, I have separated probably anywhere from five to  
23 ten different people or have been involved in those  
24 personnel matters.

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1 A. In July of 2002? Approximately 80 to 85.

2 Q. Okay. Was there a single individual who was  
3 in charge of the entire facility?

4 A. In July of 2002 --

5 Q. Yes.

6 A. -- that was Robin Connor.

7 Q. What was her position?

8 A. She was the client delivery executive.

9 Q. Okay. Who were your direct reports in July of  
10 2002?11 A. Jose Tieso, Karen Jennings, who was at the  
12 time Karen Kilby, Sandra Foulk, Bridget Wilson, Jamie  
13 Laporte, Iris Borders and Michael Moore.

14 How many am I up to?

15 Q. Seven.

16 A. I would have to check the records on the rest  
17 of the names. I don't recall each of them.

18 Q. Okay. That was in July 2002?

19 A. Correct.

20 Q. Okay. What about July of 2004? Who were your  
21 direct reports?22 A. It would be Kay Wasno, Barbara Jackson, Jose  
23 Tieso, Gina Perez. There's one more. I cannot remember  
24 their name.

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1 Q. How long have you been employed with EDS?

2 A. Seventeen years.

3 Q. Tell me again your position in 2004.

4 A. Client delivery executive.

5 Q. Okay. How many employees did you terminate as  
6 client delivery executive?

7 A. I don't recall.

8 Q. Can you recall any other than Ms. Lipscomb and  
9 Roberta McWilliams?

10 A. I don't recall.

11 Q. Okay. I may not have asked you this.

12 Have you ever been deposed before?

13 A. I have not.

14 Q. Have you ever given testimony under oath  
15 before?

16 A. I have not.

17 Q. I'd like you to look at what's been marked  
18 today as EDS No. 1. Can you find that there in your  
19 stack? It's the collection of documents that Mr. Piatak  
20 gave me yesterday.

21 A. EDS 1?

22 Q. Yes.

23 A. Okay.

24 Q. Specifically, I want to call your attention,

CORBETT &amp; WILCOX

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4 (Pages 10 to 13)

Page 10	Page 12
<p>1 first of all, to the third and fourth pages of that 2 document. Do you know from what this document was taken? 3 A. This would be a summary document from Kay 4 Wasno related to circumstances surrounding Roberta 5 McWilliams. 6 Q. Okay. So it was authored by Ms. Wasno? 7 A. Correct. 8 Q. All right. When did you first get involved 9 with the ultimate termination of Roberta McWilliams? 10 A. I don't recall the exact date. 11 Q. Well, looking at this, the first of July 9, 12 does that refresh your recollection at all as to when you 13 first got involved? 14 A. No. I was involved with Roberta McWilliams 15 for a substantial amount of time prior to this -- leading 16 up to this. 17 Q. Okay. How long was Ms. McWilliams out on 18 medical leave at the time of her termination? 19 A. At the time of her termination, she was not on 20 medical leave. 21 Q. She had returned from medical leave? 22 A. Yes. 23 Q. How long had she been out? 24 A. When she had gone out on medical leave?</p>	<p>1 Q. All right. Did you discuss that with 2 Ms. Wasno? 3 A. I recall discussing with Kay that Kay 4 discussed with CIGNA the denial of Roberta's FMLA and 5 that CIGNA would be sending a letter to Roberta with her 6 rights to appeal the decision of denial. 7 Q. Okay. This would have been on July 9th that 8 the letter was being sent to her telling her she had 15 9 days to respond with medical documentation? 10 A. Yes. 11 Q. Okay. Did you have an understanding of this 12 later when you made the decision to terminate 13 Ms. McWilliams? 14 A. I believe the decision to terminate 15 Ms. McWilliams was made that day. 16 Q. What day? 17 A. The 9th, pending decision of the appeal. 18 Q. Okay. Turning to the next page of this 19 document, it seems to indicate that she discussed this 20 with you today, meaning July 9th, and you agreed that you 21 should go ahead and terminate her. Is that correct? 22 A. That is correct. 23 Q. And that Kay then left her a message telling 24 her to return the call. Was that to inform her that she</p>
Page 11	Page 13
<p>1 Q. Yeah. 2 A. I don't recall. 3 Q. Okay. Let's look at Ms. Wasno's note of 4 July 9th. Did you discuss the substance of this note 5 with Ms. Wasno? 6 A. Yes. 7 Q. Okay. Do you recall what you had discussed? 8 A. Yes. 9 Q. Tell me what you recall discussing with 10 Ms. Wasno about this note. 11 A. I discussed with Kay and with Christine 12 Cornwell conversations that Kay had had with Kim Rudeen 13 at CIGNA. CIGNA had advised Kay that Roberta's appeal of 14 her time out was denied. 15 Q. Which time out? FMLA or STD? 16 A. I'm not sure. We would have relied on CIGNA 17 for both of those. 18 Q. Looking at about the fourth line down, it 19 says, "She conferenced FMLA in on the call, and they 20 advised that a letter was being sent to Roberta today 21 that she has 15 days to respond with medical 22 documentation of approval for FMLA." 23 Do you see that? 24 A. I do.</p>	<p>1 was being terminated? 2 A. I don't recall what that particular phone call 3 was for. 4 Q. Okay. 5 A. I don't believe it would have been to 6 terminate her. I believe we made a decision to terminate 7 pending notice of the appeal. 8 Q. Okay. Is there anything here that says it was 9 a termination pending the appeal of her denial of FMLA or 10 a request for leave? 11 A. Yes. We agreed that option two was our 12 option; however, we were aware that Roberta was being 13 mailed the notice of appeal. 14 Q. Okay. Let's turn to the next document which 15 appears to be an e-mail from you to Ms. Wasno with a copy 16 to Mr. Dominica. Do you see that? Do you see that 17 e-mail? 18 A. I see it, yes. 19 Q. Okay. Now, it says that Kay called Roberta 20 into the office a little after 4:00 on July 19th, '04. 21 Correct? 22 A. Correct. 23 Q. This was ten days after the decision was made 24 to terminate. Is that correct?</p>

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5 (Pages 14 to 17)

Page 14	Page 16
<p>1 A. Yes.</p> <p>2 Q. Okay. Then it goes on to say that the</p> <p>3 decision had been made to terminate her. Is that</p> <p>4 correct?</p> <p>5 A. Why don't you give me a moment to read --</p> <p>6 Q. Sure.</p> <p>7 A. -- the whole note?</p> <p>8 Q. Sure.</p> <p>9 A. Okay. Can we go back to the question?</p> <p>10 MR. CRONIN: Can you read it back?</p> <p>11 (The reporter read the requested</p> <p>12 portion.)</p> <p>13 THE WITNESS: That is correct.</p> <p>14 BY MR. CRONIN:</p> <p>15 Q. Specifically it says that during the</p> <p>16 conversation Roberta asked if we were firing her because</p> <p>17 her short-term disability had been denied. Kay clarified</p> <p>18 that, because it had been denied, the absences are</p> <p>19 considered unexcused absence and that Roberta was being</p> <p>20 separated because of the excessive unexcused absence. Is</p> <p>21 that correct?</p> <p>22 A. That is correct.</p> <p>23 Q. All right. At that point Roberta asked about</p> <p>24 FMLA?</p>	<p>1 selected was actually not terminate but terminate</p> <p>2 depending on the resolution of the FMLA appeal. Correct?</p> <p>3 A. That is correct.</p> <p>4 Q. Okay. But according to the July 19 e-mail,</p> <p>5 you went ahead and terminated her anyway without getting</p> <p>6 a resolution of the appeal. Correct?</p> <p>7 A. And I'm not recollecting what came back from</p> <p>8 CIGNA that led us to go ahead and separate on the 19th.</p> <p>9 Q. Okay. Looking at the next page of the</p> <p>10 document, this is an e-mail from August 5th, 2004.</p> <p>11 Correct?</p> <p>12 A. Are we looking at the same document?</p> <p>13 Q. I think so.</p> <p>14 Right at the top does it say --</p> <p>15 A. Okay.</p> <p>16 Q. I did staple it.</p> <p>17 A. That's all right. Okay.</p> <p>18 Q. Based on some of the other documents you've</p> <p>19 seen in connection with the other depositions today, this</p> <p>20 seems to be e-mails back and forth between the company</p> <p>21 that handles your unemployment defense of your</p> <p>22 unemployment claims.</p> <p>23 A. Yes.</p> <p>24 Q. Okay. I guess Kay Wasno provided the</p>
Page 15	Page 17
<p>1 A. Yes.</p> <p>2 Q. Okay. Then Kay indicated that FMLA was</p> <p>3 provided and that Roberta had been paid through June 12th</p> <p>4 and that her unexcused absence was the reason for</p> <p>5 termination. What does that mean?</p> <p>6 A. Roberta's case was extremely complicated.</p> <p>7 FMLA is a collection of time over a rolling one-year</p> <p>8 period. So Roberta had used or exhausted her FMLA at the</p> <p>9 time in question and was again out and claimed to have</p> <p>10 been out for medical reasons. And then when she went to</p> <p>11 apply for that leave, it was denied.</p> <p>12 Q. Okay. The time for filing an appeal for the</p> <p>13 FMLA was still pending, however. Correct?</p> <p>14 A. I believe the appeal was to an appeal. She</p> <p>15 had been denied.</p> <p>16 Q. But you decided to terminate her before the</p> <p>17 appeal was resolved?</p> <p>18 A. It would appear so from these notes.</p> <p>19 Q. Okay.</p> <p>20 A. But the decision to terminate was based on the</p> <p>21 denial of the short-term disability. We were waiting for</p> <p>22 the appeal of the denial of the FMLA.</p> <p>23 Q. Okay. In fact, as you explained in connection</p> <p>24 with the July 9 note here, this option two that was</p>	<p>1 information as of August 5th that Roberta was out of the</p> <p>2 office from May 11th through July 12th and it was</p> <p>3 considered unexcused absences -- that she had failed to</p> <p>4 provide the appropriate documentation to our short-term</p> <p>5 disability vendor. Correct?</p> <p>6 A. Correct.</p> <p>7 Q. It doesn't say anything about her exhausting</p> <p>8 her FMLA leave, does it?</p> <p>9 A. No.</p> <p>10 Q. Do you know if by August 5th there had been a</p> <p>11 resolution with respect to Ms. McWilliams' appeal of her</p> <p>12 FMLA denial?</p> <p>13 A. I don't recall.</p> <p>14 Q. Okay. All right. When did you first get</p> <p>15 involved, similar to Ms. McWilliams, in the situation</p> <p>16 surrounding Hestal Lipscomb and her leave in 2004?</p> <p>17 A. I believe I was made aware in the May/June</p> <p>18 time frame of 2004.</p> <p>19 Q. How were you made aware?</p> <p>20 A. Barbara Jackson notified me that Hestal's</p> <p>21 request for short-term disability had been denied.</p> <p>22 Q. Okay. Did she advise you verbally or in</p> <p>23 writing? By "writing," that would include e-mails.</p> <p>24 A. Yeah. I don't recall. It could have been</p>

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6 (Pages 18 to 21)

Page 18	Page 20
<p>1 both.</p> <p>2 Q. So what did you do? What did you do?</p> <p>3 A. Recommended that we call Christine Cornwell</p> <p>4 and discuss our options.</p> <p>5 Q. So did you call Christine Cornwell?</p> <p>6 A. I did not.</p> <p>7 Q. Okay. Did somebody?</p> <p>8 A. I believe Barbara Jackson called Christine.</p> <p>9 Q. Did she report back to you?</p> <p>10 A. Yes. And I'm trying to recall whether or not</p> <p>11 Barbara Jackson and I talked to Christine Cornwell or --</p> <p>12 there were a number of conversations that I had with ER,</p> <p>13 Christine Cornwell, related to unexcused absences during</p> <p>14 this time frame.</p> <p>15 Q. With Ms. Lipscomb or with other employees as</p> <p>16 well?</p> <p>17 A. Ms. Lipscomb and also related to Roberta</p> <p>18 McWilliams.</p> <p>19 Q. Okay. Let's try to do it chronologically, if</p> <p>20 we can. After this first communication from Barbara, you</p> <p>21 had suggested she get in touch with Christine Cornwell.</p> <p>22 What was your next contact that you recall from anybody</p> <p>23 regarding Hestal Lipscomb?</p> <p>24 A. I don't recall the next one. It would have</p>	<p>1 overlapped in terms of being with both Barbara Jackson</p> <p>2 and Christine Cornwell?</p> <p>3 A. I don't recall.</p> <p>4 Q. All right. Anybody else that you had any</p> <p>5 communications with regarding Hestal Lipscomb other than</p> <p>6 Barbara Jackson and Christine Cornwell?</p> <p>7 A. I don't recall having other conversations with</p> <p>8 them regarding Hestal.</p> <p>9 Q. Okay. Did you ever look at any documents in</p> <p>10 connection with these conversations that you had with</p> <p>11 Christine Cornwell and Barbara Jackson?</p> <p>12 A. At the time? No.</p> <p>13 Q. Okay. So it would have been situations where</p> <p>14 they would call you or, in the case of Barbara Jackson,</p> <p>15 she would meet with you and you would discuss Hestal</p> <p>16 Lipscomb?</p> <p>17 A. Let me go back to your question. I said no.</p> <p>18 I recall a denial letter from CIGNA.</p> <p>19 Q. Okay. Now, was this a denial of STD or FMLA?</p> <p>20 A. As I recall, it was a denial of STD.</p> <p>21 Q. Do you recall about when that was? Is it</p> <p>22 likely that it would occur right at the beginning when</p> <p>23 Ms. Jackson contacted you to let you know she had</p> <p>24 received a denial?</p>
Page 19	Page 21
<p>1 been either a discussion with Barbara Jackson and</p> <p>2 Christine Cornwell or discussion with Barbara Jackson</p> <p>3 related to her conversation with Christine.</p> <p>4 Q. Okay. So do you recall two different</p> <p>5 conversations?</p> <p>6 A. I can't recall.</p> <p>7 Q. Can you recall anything about conversations in</p> <p>8 between when you were first notified?</p> <p>9 A. Well, certainly. But I can't recall which</p> <p>10 conversation what was said.</p> <p>11 Q. All right. How many conversations were there?</p> <p>12 A. I don't recall.</p> <p>13 Q. More than six?</p> <p>14 A. Conversations between myself and Christine</p> <p>15 Cornwell? Potentially.</p> <p>16 Q. Okay. How about Barbara Jackson? How many</p> <p>17 with Barbara Jackson?</p> <p>18 A. I probably met with Barbara Jackson four or</p> <p>19 five times, perhaps.</p> <p>20 Q. Okay. So maybe six times with Christine</p> <p>21 Cornwell and maybe four to five with Barbara Jackson. Is</p> <p>22 that right?</p> <p>23 A. That's correct.</p> <p>24 Q. All right. How many of those would have</p>	<p>1 A. I -- it's likely.</p> <p>2 Q. Okay. Do you recall the substance of any of</p> <p>3 these conversations that you would have had with</p> <p>4 Ms. Cornwell or Ms. Barbara Jackson?</p> <p>5 A. Yes.</p> <p>6 Q. Tell me what you recall.</p> <p>7 A. I recall having conversations with</p> <p>8 Ms. Cornwell and with Ms. Jackson regarding our options</p> <p>9 related to Hestal. I recall discussing that Hestal had</p> <p>10 been out for two weeks, that we did not -- or that the</p> <p>11 proof of why she had been out had not been provided to</p> <p>12 CIGNA. I recall discussing what our options were related</p> <p>13 to the treatment of Hestal based on not receiving that</p> <p>14 information. I recall our options were to consider</p> <p>15 repayment of the time that she was out without</p> <p>16 documentation. I recall discussion of whether</p> <p>17 termination would be appropriate. And I don't recall if</p> <p>18 we discussed any other disciplinary options at that</p> <p>19 point.</p> <p>20 Q. What point are you talking about when you say</p> <p>21 "that point"?</p> <p>22 A. During the times that I was talking with</p> <p>23 Christine and Barbara Jackson related to Hestal Lipscomb.</p> <p>24 Q. Okay. The time period we're talking about is</p>

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7 (Pages 22 to 25)

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1 from when Barbara Jackson first came to you and when  
 2 Ms. Lipscomb was terminated?  
 3 A. Correct.  
 4 Q. Okay. That would have been, is it fair to  
 5 say, probably about a month?  
 6 A. It could have been several months.  
 7 Q. You think it could have been several months?  
 8 A. Sure. My conversations with Christine  
 9 Cornwell -- as it relates to Hestal Lipscomb, no. My  
 10 conversations related to how to handle unexcused  
 11 absences, yes.  
 12 Q. Okay. Was it principally in connection with  
 13 these two employees, Roberta McWilliams and Hestal  
 14 Lipscomb?  
 15 A. Predominantly, yes.  
 16 Q. Okay. Were there other employees?  
 17 A. Not that I recall.  
 18 Q. Okay. So you had been having ongoing  
 19 discussions with Ms. Cornwell about Roberta McWilliams,  
 20 and then Ms. Lipscomb's situation arose and became  
 21 integrated with these conversations with her. Is that  
 22 fair to say?  
 23 A. We never discussed the two cases together;  
 24 however, I had discussions with Christine Cornwell

Page 23

1 regarding how to handle unexcused absences related to  
 2 these two people.  
 3 Q. Okay. So you recall talking with Christine  
 4 Cornwell about having Hestal repay for the time or  
 5 termination. You don't recall any other options.  
 6 Correct?  
 7 A. I don't recall any other options.  
 8 Q. Okay. What do you recall discussing about the  
 9 repayment option?  
 10 A. I recall discussing one option available to us  
 11 would be to have Hestal pay for the time that she was out  
 12 of the office that was not approved.  
 13 Q. Okay. Was that discussed on more than one  
 14 occasion?  
 15 A. I don't recall if it was discussed on more  
 16 than one occasion. I recall that we talked about  
 17 difficulty in administering that approach given that her  
 18 sole means of earning income was to be at work and that  
 19 in fact was the problem. So the likelihood of getting  
 20 her to repay something when she can't explain why she  
 21 didn't show up was slim to none.  
 22 Q. Well, you did understand that she had been  
 23 trying through her doctor's office to explain to CIGNA  
 24 and give the medical basis for her reasons not being in

Page 24

1 the office?  
 2 A. No. You know, she indicated that she was  
 3 doing that, I believe, once, but evidence indicated to me  
 4 that she wasn't trying very hard at all.  
 5 Q. Okay. Is it still your belief that CIGNA  
 6 never received any documentation from her physicians?  
 7 A. Yes.  
 8 Q. Now, did you ever discuss with Christine  
 9 Cornwell or anyone the requirement that people who are  
 10 given STD at EDS sign an agreement with EDS to reimburse  
 11 EDS for any short-term leave that's taken that results in  
 12 an overpayment?  
 13 A. I don't recall having that conversation with  
 14 Christine until the point that we discussed options.  
 15 Q. Okay. Why don't you take a look at -- and  
 16 this is in EDS No. 3. Turn to page EDS 1 -- no. I'm  
 17 sorry. It's not in that booklet. It's in a separate  
 18 booklet. EDS No. 5. If you could turn to EDS I 00223,  
 19 please.  
 20 A. Okay.  
 21 Q. Now, I'd like you to look down to this first  
 22 section, the third paragraph from the bottom, which  
 23 discusses what you're going to be required to do if you  
 24 apply for STD. There's a sentence there that begins,

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1 "Further, you will be required to sign and return an EDS  
 2 reimbursement agreement relating to overpayment made to  
 3 you for short-term disability, long-term disability and  
 4 worker's compensation."  
 5 A. Okay.  
 6 Q. You see that?  
 7 A. I see it.  
 8 Q. Obviously, Hestal was required to sign that.  
 9 A. I don't know.  
 10 Q. But she should have been. Right?  
 11 A. I don't know.  
 12 Q. But isn't this the EDS benefits handbook that  
 13 was in place in 2004?  
 14 A. It is.  
 15 Q. Okay. Does and did EDS follow this handbook  
 16 in 2004?  
 17 A. We work with CIGNA to administer short-term  
 18 disability.  
 19 Q. Okay. But this doesn't refer to a CIGNA  
 20 reimbursement agreement. It says an EDS reimbursement  
 21 agreement.  
 22 A. I'm sure that EDS subcontracts with CIGNA, and  
 23 by extension they're referring to their -- I see right  
 24 above that any medical documentation should be submitted

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11 (Pages 38 to 41)

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1 where we can discuss it. Why did you do that?

2 A. Anytime we separate an employee we take

3 caution to do it privately and not to have open

4 conversations on the floor related to someone's

5 employment.

6 Q. Okay.

7 A. So Hestel wanted to continue the conversation.

8 I called her back into the office to continue the

9 conversation.

10 Q. Okay. It goes on to say that Hestel proceeded

11 to explain that she had called CIGNA and called the

12 doctor's office seeking the required documentation. Do

13 you see that?

14 A. I do.

15 Q. Okay. That's what you recall her telling you

16 and telling Barbara?

17 A. Yes.

18 Q. All right. Then she asked why you had

19 immediately jumped to termination. Then you said, "I

20 discussed that we had discussed different options, such

21 as repayment, vacation time or termination. We felt that

22 we were left with no choice but to terminate her because

23 we had no documentation for her absences." It mentions

24 here vacation time. Does that refresh your recollection

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1 as to whether that was something that was considered?

2 A. It does. In one of my conversations with

3 Barbara Jackson we had discussed that she did not have

4 vacation time remaining.

5 Q. Vacation time remaining or enough vacation

6 time to pay for all of the days?

7 A. Correct.

8 Q. Okay. The latter. Correct?

9 A. That was not my conversation. My conversation

10 was: Did she have enough vacation time to cover it?

11 Q. Right.

12 A. And the answer was no.

13 Q. Okay. As we discussed earlier, you didn't ask

14 how close she would have been in terms of how many days.

15 Correct?

16 A. That is correct.

17 Q. All right. Then you say, "We felt that we

18 were left with no choice." Why did you say you were left

19 with no choice?

20 A. Because as I mentioned before, her ability to

21 repay was based on her ability to come to work.

22 Q. Okay.

23 A. And she had demonstrated an inability to come

24 to work.

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1 Q. Okay. How many sick days was Hestel Lipscomb

2 entitled to in 2004?

3 A. Sick days are not tracked.

4 Q. I see.

5 Okay. Vacation days are. Correct?

6 A. Yes.

7 Q. Okay. So sick days are left at the discretion

8 of the organization?

9 A. Pretty much. We monitor -- employees are paid

10 for their time, especially when they're salaried, as

11 Ms. Lipscomb was. They're paid for their time whether

12 they're there or not. So when an employee is out sick,

13 we monitor how many days they're out sick. If they're

14 out sick for more than three days, we ask for a doctor's

15 notice of return to work.

16 Q. Mm-hmm.

17 A. We are aware that short-term disability and

18 FMLA requests -- well, let me not include FMLA. We're

19 aware that short-term disability will not be evaluated

20 for less than five days. So if somebody is out for more

21 than five days, we will notify CIGNA to evaluate

22 short-term disability. So three days we -- you know,

23 obviously, when someone doesn't show up to work, we try

24 to find out what happened.

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1 Q. Mm-hmm.

2 A. If there was no phone call, nothing, we may

3 call their home, their whoever to figure out what

4 happened today. Certainly, after three days we would

5 have a conversation with the employee to say, "Why were

6 you out?" And if they're sick or they say they were sick

7 for three days, we would ask them for a doctor's notice

8 to return to work.

9 Q. Okay. I mean, that's what happened with

10 Ms. Lipscomb. Correct? I mean, she was asked for a

11 return to work note and she provided it.

12 A. It's a little bit different. Ms. Lipscomb was

13 not out sick, according to what she notified us of. She

14 notified us that she needed time away from work, and she

15 notified us that she was going out for a surgery --

16 Q. Right.

17 A. -- was her information to us.

18 Q. Right.

19 A. And in that situation CIGNA would be called to

20 manage the short-term disability.

21 Q. Right.

22 A. I view that differently than necessarily sick

23 days. However, anytime that you're out, whether it's

24 sick for more than three days or in a potentially

**Affidavit of Laurence V. Cronin**

**Exhibit C**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

HESTAL LIPSCOMB,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	05-477-SLR
ELECTRONIC DATA SYSTEMS	)	
CORPORATION,	)	
	)	
Defendant.	)	

Deposition of HESTAL LIPSCOMB taken pursuant to notice at the offices of Richards, Layton & Finger, One Rodney Square, Wilmington, Delaware, beginning at 10:00 a.m. on Tuesday, February 21, 2006, before Anne L. Adams, Registered Professional Reporter and Notary Public.

APPEARANCES:

LAURENCE V. CRONIN, ESQ.  
SMITH, KATZENSTEIN & FURLOW  
800 Delaware Avenue  
Wilmington, Delaware 19899  
for the Plaintiff,

THOMAS J. PIATAK, ESQ.  
BAKER HOSTETLER  
3200 National City Center  
1900 East 9th Street  
Cleveland, Ohio 44114-3485  
for the Defendant.

ALSO PRESENT: Lance Rogers, EDS

-----  
WILCOX & FETZER  
1330 King Street - Wilmington, Delaware 19801  
(302) 655-0477

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1 **A. Yes.**  
2 Q. And what are your hours of work?  
3 **A. I work 3 to 11 p.m.**  
4 Q. And what's your compensation there?  
5 **A. I don't understand the question.**  
6 Q. What amount are you paid?  
7 **A. Before taxes I think it's 751 every two weeks.**  
8 Q. Are you paid on a salary basis or hourly basis?  
9 **A. Hourly.**  
10 Q. What is your hourly rate?  
11 **A. 10.02.**  
12 Q. And how many hours do you work per week  
13 approximately?  
14 **A. 75.**  
15 Q. 75 hours per week?  
16 **A. Excuse me. I'm sorry. I misunderstood the**  
17 **question. 37.5 hours per week.**  
18 Q. Do you ever work overtime?  
19 **A. Occasionally.**  
20 Q. Are you entitled to benefits at the Delaware  
21 Psychiatric Center?  
22 **A. Yes.**  
23 Q. What are your benefits? What benefits do you  
24 receive?

1 **A. No.**  
2 Q. Do you know what their policy on absenteeism is  
3 at the Delaware Psychiatric Institute?  
4 **A. Yes.**  
5 Q. And what is it?  
6 **A. You have a certain amount of days that you can be**  
7 **out. I believe it's three days if you are sick. And**  
8 **then after three days, you would have to have a note from**  
9 **your doctor or you can put in for your sick time or use**  
10 **vacation time depending on the situation.**  
11 Q. Now, do you know what the policy is if there is  
12 an unexcused period of unexcused absence?  
13 **A. No, I don't.**  
14 Q. Do you know what their policy is on the Family  
15 Medical Leave Act or FMLA?  
16 **A. I might have the policy. I did read through it.**  
17 **I'm not exactly familiar because I have never had to**  
18 **actually use it.**  
19 Q. Do you know what the policy would be if you are  
20 out for three days or more and do not have a note from  
21 your doctor?  
22 **A. Well, I know you get a verbal warning. Then you**  
23 **would get a written warning and they would reprimand you.**  
24 Q. So being without a medical excuse can lead to

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Page 13

1 **A. I have Coventry Health.**  
2 Q. I heard --  
3 **A. Coventry.**  
4 Q. Okay. I didn't hear the first word. Besides  
5 health insurance, any other benefits you get at the  
6 Delaware Psychiatric Center?  
7 **A. I have dental.**  
8 Q. Anything else?  
9 **A. No.**  
10 Q. How does the benefit package compare with your  
11 benefit package at EDS?  
12 **A. I'm not exactly -- I haven't really used my**  
13 **medical package part yet. I did use my dental. My**  
14 **medical didn't kick in until after I was there three**  
15 **months. So I haven't honestly used it.**  
16 Q. And who is your supervisor there?  
17 **A. That would be Bruce Ashbaum. He's also the**  
18 **hospital administrative director.**  
19 Q. Do you enjoy your work there?  
20 **A. Yes.**  
21 Q. Have you received any accommodations or awards  
22 for your performance?  
23 **A. Not as yet.**  
24 Q. Have you received any discipline?

1 discipline?  
2 **A. Yes.**  
3 Q. Has that been true for other places that you've  
4 worked as well?  
5 **A. No, with the exception of EDS.**  
6 Q. Are you currently attending any form of school?  
7 **A. No, sir.**  
8 Q. Other than your work at the Delaware Psychiatric  
9 Center, have you had any other employment of any kind  
10 since you left EDS?  
11 **A. Yes, I have.**  
12 Q. Where else have you worked?  
13 **A. I have had temp assignments, two temp**  
14 **assignments. One was for one week and that was at**  
15 **Nationwide Insurance. Then I had another assignment.**  
16 **And that lasted a month. And it was at Citigroup.**  
17 Q. What was the temporary agency?  
18 **A. One was, the first one was Careers. The second**  
19 **one was Randstad.**  
20 Q. Rand --  
21 **A. R-A-D-S-T-A -- think it is Randstad.**  
22 MR. CRONIN: I think it's in our  
23 interrogatory responses.  
24 BY MR. PIATAK:

4 (Pages 10 to 13)

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1 working at EDS? Who did you meet with from the company?  
2 **A. Barb Jackson interviewed me. And I spoke with**  
3 **Nicky, who is the, I believe the administrative**  
4 **secretary, she gave me instructions where to get my drug**  
5 **test done and fingerprints and things of nature.**  
6 Q. Do you remember speaking to anyone besides Barb  
7 and Nicky before coming to work at EDS?  
8 **A. No.**  
9 Q. Do you remember what you and Barb talked about?  
10 **A. During the interview?**  
11 Q. Yeah, during the interview.  
12 **A. No, I don't remember exact conversation.**  
13 Q. Was Barb the only person that you interviewed  
14 with prior to being hired at EDS?  
15 **A. I can't recollect. I'm not sure. Tracy Eddy**  
16 **might have came in while she was doing the interview.**  
17 Q. Anyone that you remember interviewing with before  
18 starting at EDS other than Barb and possibly Tracy?  
19 **A. No.**  
20 Q. Did you turn down any job offer to come to EDS?  
21 **A. No.**  
22 Q. Hestal, during the time that you worked at EDS, I  
23 want you to tell me about any complaints that you made  
24 during that period of time about EDS or any of its

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1 employees.  
2 **A. I didn't have any complaints.**  
3 Q. What was your initial job when you were hired in  
4 at EDS?  
5 **A. Specialized support clerk.**  
6 Q. And is that the position that you retained during  
7 your whole time at EDS or did that change in any way?  
8 **A. No, that was it except for I was back-up for**  
9 **Linda Jackson, who was the team leader, when she wasn't**  
10 **there. I was like team leader for them when she wasn't**  
11 **there.**  
12 Q. So the whole time you were at EDS your position  
13 was specialized support clerk?  
14 **A. Yes.**  
15 Q. But after a certain point, you became a back-up  
16 for Linda Jackson when she was out?  
17 **A. Yes. She would leave directives for me to pass**  
18 **on for her or something like that.**  
19 Q. Do you remember when it was you started acting as  
20 a back-up for Linda Jackson?  
21 **A. No.**  
22 Q. As a specialized support clerk, what were your  
23 duties and responsibilities?  
24 **A. We processed the Medicaid claims, sorted and**

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1 **scanned, the monthly bulk mailing and daily stuffing and**  
2 **mailing of benefit information.**  
3 Q. Any other duties or responsibilities that you  
4 remember having?  
5 **A. Inventory, basically keeping the shelves stocked.**  
6 Q. Anything else?  
7 **A. Just sign for UPS packages, sort mail. I left**  
8 **that out. And I would put postage on the mail when I**  
9 **mailed them out after stuffing them. I would do the**  
10 **monthly report for the meter machine, the stamping**  
11 **machine and turn it in. That's about it. Answer the**  
12 **phone.**  
13 Q. And were you working in the mailroom area  
14 primarily?  
15 **A. Yes.**  
16 Q. And the EDS facility in Delaware, was it your  
17 understanding that most of what it did was process  
18 Medicaid claims?  
19 **A. Yes.**  
20 Q. And who was your supervisor?  
21 **A. Tracy Eddy.**  
22 Q. Was that true the whole time you were there?  
23 **A. Yes.**  
24 Q. What was your salary or compensation?

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1 **A. Came in at 9.60, left at 10.10.**  
2 Q. So the money you made when you left, that's  
3 approximately equal to what you are making now at  
4 Delaware Psychiatric Center?  
5 **A. Yes.**  
6 Q. And what benefits were you eligible for?  
7 **A. Where at, sir?**  
8 Q. At EDS. Sorry.  
9 **A. Medical, dental.**  
10 Q. You mentioned Linda Jackson already. Who was  
11 Linda Jackson?  
12 **A. She was my team leader.**  
13 Q. And what is a team leader?  
14 **A. She oversees the personnel that worked in the**  
15 **mailroom.**  
16 Q. In your dealings with Linda Jackson, was she  
17 honest?  
18 **A. Yes.**  
19 Q. Was she fair?  
20 **A. Yes, she was.**  
21 Q. Did you consider her to be a friend?  
22 **A. Yes, I did.**  
23 Q. You mentioned Tracy Eddy. In your dealings with  
24 Tracy Eddy, was she honest?

8 (Pages 26 to 29)

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1 were considered excused absences?  
2 **A. Yes.**  
3 Q. And that unexcused absences could lead to  
4 discipline?  
5 **A. Yes.**  
6 Q. Including termination?  
7 **A. Could you repeat that, please? I'm sorry.**  
8 Q. Sure. As I said, if I ask you questions you  
9 don't understand or I mumble something, let me know.  
10 And you knew that unexcused absences could  
11 lead to discipline, including termination?  
12 **A. Yes.**  
13 Q. And you took some time off of work in August of  
14 2003. Do you remember that?  
15 **A. Vacation?**  
16 Q. No, not vacation. I think it was health related.  
17 Do you remember being off work for a time in August,  
18 2003?  
19 **A. No.**  
20 MR. PIATAK: That's fine.  
21 (Lipscomb Deposition Exhibit No. D, Letter  
22 from MetLife Synchrony dated August 7, 2003, was marked  
23 for identification.)  
24 BY MR. PIATAK:

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1 Q. Hestel, I have handed you what's been marked as  
2 Exhibit D. This is a letter to you dated August 7th,  
3 2003, to the West 2nd address that we've already  
4 mentioned?  
5 **A. Yes.**  
6 Q. And this is from MetLife Synchrony. Do you see  
7 that?  
8 **A. Yes.**  
9 Q. And EDS does not directly evaluate requests for  
10 short-term disability or FMLA leave, correct?  
11 **A. I didn't understand that.**  
12 Q. EDS does not, when an employee applies for FMLA,  
13 Family Medical Leave Act, or short-term disability, EDS  
14 is not directly evaluating that request. Were you aware  
15 of that?  
16 **A. I'm still not exactly sure what you mean on the**  
17 **question.**  
18 Q. I'll try to come back to it. In the letter it  
19 says, the first paragraph, "We have evaluated your  
20 request for short-term disability and find that you are  
21 eligible for leave under the term of your policy. Based  
22 on the medical information submitted to this office, your  
23 absence qualifies for disability leave from August 1,  
24 2003, through August 18, 2003." Do you see that?

1 **A. Yes.**  
2 Q. Does that refresh your recollection, your memory  
3 that you were off from work for some time in August of  
4 2003?  
5 **A. I don't recall being off in August. I think it**  
6 **was in April that I was out, not in August.**  
7 Q. And it also, next paragraph, "You are also  
8 eligible for leave under the Family Medical Leave Act of  
9 1993 from August 1, 2003, through August 18, 2003, and  
10 your absence will be counted as part of your  
11 entitlement." Do you see that?  
12 **A. Yes.**  
13 Q. And do you have any memory at all of being out in  
14 August of 2003?  
15 **A. No, I don't.**  
16 Q. Do you have any memory of being out for medical  
17 reasons at any time during 2003?  
18 **A. To my recollection, I thought it was in April**  
19 **that I was out. If it was August, then that means I got**  
20 **my months mixed. But I thought it was April I was out,**  
21 **April of 2003. I thought it was April of 2003. But if**  
22 **it was August, that's my error.**  
23 Q. Did you let anyone at EDS know that you were  
24 going out for medical reasons in 2003?

1 **A. Yes, I did.**  
2 Q. Who did you let know?  
3 **A. Tracy Eddy.**  
4 Q. And what did you tell Tracy in 2003?  
5 **A. That I had to go out for a surgical procedure.**  
6 Q. Did you tell her anything else?  
7 **A. No. I told her the day that the surgery would be**  
8 **on.**  
9 Q. So you told her you had to go out for a surgical  
10 procedure and the date of the surgery?  
11 **A. Yes.**  
12 Q. And you didn't tell her anything else about that?  
13 **A. No.**  
14 Q. And then what happened once you told Tracy that  
15 you were going to be out for a surgical procedure and you  
16 gave her the date?  
17 **A. She said she would take care of the FMLA papers**  
18 **and she picked up the phone and made a phone call.**  
19 Q. And what did you understand her to mean when she  
20 told you she would take care of the FMLA papers?  
21 **A. That she would take care of it.**  
22 Q. And you knew that your leave potentially was  
23 covered by the family medical Leave Act, the FMLA?  
24 **A. Yes.**

10 (Pages 34 to 37)

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1 Q. And you knew if your leave was covered by the  
2 FMLA, it was counted as an excused absence under EDS's  
3 policy?  
4 **A. Yes.**  
5 Q. And if it was not covered, it might be counted as  
6 an unexcused absence?  
7 **A. Yes.**  
8 Q. And so do you remember talking to Tracy and her  
9 saying she would take care of the FMLA paperwork? Did  
10 you have your doctors submit any medical information in  
11 connection with the time you were off in 2003?  
12 **A. To whom?**  
13 Q. To anybody, to EDS or to MetLife Synchrony?  
14 **A. I went out. I had the surgery. I was out two**  
15 **weeks. And I went back for my checkup and they released**  
16 **me back to work. I didn't have any paperwork or anything**  
17 **that I had to submit to anyone or anything like that.**  
18 Q. And do you remember receiving a letter, this  
19 letter from MetLife Synchrony?  
20 **A. No, I don't.**  
21 Q. There is a paragraph on there that's in bold  
22 language, bold print. Do you see that?  
23 **A. Yes.**  
24 Q. "If your absence extends beyond August 18, 2003,

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1 you must provide clinical documentation of the medical  
2 reasons for your continued absence and how they will  
3 impact ability to return to work. Although we will  
4 attempt to contact you and your physician, it is your  
5 responsibility to ensure Synchrony is provided the  
6 additional information which may include office notes,  
7 laboratory data and other pertinent tests needed to  
8 evaluate your condition and your functionality."  
9 This letter is indicating that you might  
10 have to provide medical information directly to  
11 Synchrony; is that correct?  
12 **A. That's what you are reading.**  
13 Q. Had you received such a letter, how would you  
14 respond?  
15 **A. I would have submitted it to my doctor so it**  
16 **could be filled out and sent to the proper destination.**  
17 Q. And why would you do that?  
18 **A. Because it was sent to me.**  
19 Q. And because they were asking you to get them the  
20 medical documentation?  
21 **A. If that's what it stated.**  
22 Q. And if someone acting on your employer's behalf  
23 is asking you to provide medical documentation, you  
24 understand that it's your job to get that medical

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1 documentation to them?  
2 **A. Yes.**  
3 Q. And as a responsible employee, you would take  
4 care to do that, right?  
5 **A. If they requested it.**  
6 Q. You were also away from work at EDS for a time in  
7 late April, early May of 2004, correct?  
8 **A. Say that again, please.**  
9 Q. Sure. You were also away from work for a time in  
10 late April and early May of 2004, correct?  
11 **A. Yes, I was.**  
12 Q. And why did you take time off work then?  
13 **A. I had a medical procedure that needed to be taken**  
14 **care of.**  
15 Q. And before you went out, did you tell anyone that  
16 you would be missing from work?  
17 **A. Yes, I did.**  
18 Q. And who did you tell?  
19 **A. I spoke with Tracy Eddy.**  
20 Q. And what did you tell Tracy?  
21 **A. That I would have to go out to have a surgical**  
22 **procedure done. She then, in turn, requested that I get**  
23 **some type of document from the doctor stating which day I**  
24 **was going out to have the procedure done. She also**

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1 **wanted it to state how long I was going to be out, but**  
2 **that couldn't be done until after the procedure was done.**  
3 Q. So you told Tracy that you were going to be going  
4 out on a surgical procedure?  
5 **A. Yes.**  
6 Q. Anything else you told her about that?  
7 **A. No.**  
8 Q. And she asked you for some documentation about  
9 how long you were going to be out?  
10 **A. Yes.**  
11 Q. What else happened?  
12 **A. Nothing. I called the doctor and asked him could**  
13 **they fax me a letter stating which day I was going to**  
14 **have surgery and how long was I going to be out. They**  
15 **said they were unable to put that part on there because**  
16 **they would not know until after I had the procedure done.**  
17 **They could only state what day the procedure was to be**  
18 **done.**  
19 Q. And which doctor did you ask to fax this?  
20 **A. The doctor at Wilmington Hospital Surgical**  
21 **Clinic.**  
22 Q. Do you remember the doctor's name?  
23 **A. I think it's Dr. Kratz.**  
24 Q. Dr. Kraut?

11 (Pages 38 to 41)

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1 **A. Kraut maybe. I'm not sure exactly how to**  
2 **pronounce it, but it does start with a K. He's the head**  
3 **doctor of the surgical unit or something like.**  
4 Q. So you had asked Dr. Kraut to fax it to you?  
5 **A. Not him personally, I asked his secretary. I**  
6 **called the nurses and they returned my phone call. I**  
7 **told them what I needed. And they said, okay, they would**  
8 **have it faxed right over. I asked that twice because the**  
9 **first time it wasn't sent. So I requested it again and**  
10 **they said they would fax it out immediately.**  
11 Q. And who did you have them fax it to?  
12 **A. They actually faxed it to me at EDS and I**  
13 **presented it to Tracy Eddy right after the fax came in.**  
14 Q. And this was before you went out on leave?  
15 **A. Yes.**  
16 Q. And you told Tracy that you were going out for a  
17 surgery and she asked for this documentation. Did you  
18 tell anyone else at EDS that you were going to be going  
19 out in late April and early May of 2004?  
20 **A. My coworkers that I worked with closely in the**  
21 **mailroom. I told Linda Jackson. I let them know that I**  
22 **would be going. I didn't know how long I was going to be**  
23 **gone, but I was going out for the procedure.**  
24 Q. So you told several people that you were going to

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1 Q. Have you ever been prevented from doing your work  
2 because of the tumors themselves?  
3 **A. No.**  
4 Q. Is there any other medical condition you have  
5 that's ever prevented you from doing your work?  
6 **A. No.**  
7 Q. So you were going to go out for surgery and there  
8 was a recuperation period after surgery?  
9 **A. Yes.**  
10 Q. You said for the period of time you were out in  
11 2003 that Tracy made a comment that she would take care  
12 of the FMLA papers. Did you have any discussions with  
13 anyone at EDS about FMLA leave or short-term disability  
14 before you went out?  
15 **A. No, not at all. The only thing that went on**  
16 **between me and Tracy is she asked me for the paper saying**  
17 **which date I was going out. She asked me where was the**  
18 **procedure going to be done. All that was on the letter**  
19 **when it was faxed over.**  
20 MR. CRONIN: Now is a good time to take a  
21 break.  
22 (Thereupon, a short recess was had.)  
23 (Lipscomb Deposition Exhibit No. E, Letter  
24 from Dr. Kraut dated April 19, 2004, was marked for

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1 be out for surgery?  
2 **A. Yes.**  
3 Q. But the official notice is what you gave to Tracy  
4 Eddy?  
5 **A. Yes.**  
6 Q. And what you told Tracy is that you were going to  
7 be out on surgery and when that surgery was scheduled?  
8 **A. Yes.**  
9 Q. And that was all the information you gave her  
10 about your surgery?  
11 **A. Yes.**  
12 Q. What was the surgery for?  
13 **A. Ganglioma cell tumor.**  
14 Q. And what -- I'm not a doctor nor do I play one on  
15 TV. What is that?  
16 **A. It's a, best of my knowledge -- I'm not exactly**  
17 **sure what they are. They can become cancerous at some**  
18 **point or not. The doctor suggested removal. And like**  
19 **you said, you are not a doctor. So I took their advice**  
20 **and had the surgery done.**  
21 Q. Do they cause any, apart from the time when you  
22 are recovering from surgery, do they cause any work  
23 related problems?  
24 **A. No, but they can be painful at times depending.**

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1 identification.)  
2 Q. Hestal, while you were out, we marked Exhibit E.  
3 If you could take a look at that and let me know what  
4 that is.  
5 **A. This is the letter that was sent to me to give to**  
6 **Tracy Eddy saying what day I would be going out for my**  
7 **surgery, and if they needed any further information, they**  
8 **could call them.**  
9 Q. So this is the document that you were referring  
10 to earlier?  
11 **A. Yes.**  
12 Q. And it was faxed directly to you?  
13 **A. It was faxed to one of the fax machines in EDS.**  
14 Q. How did you know this fax was coming?  
15 **A. I spoke with the nurse. She says I'm going to**  
16 **keep you on the phone and I'll fax while you are here.**  
17 **And she faxed it and I walked over to the fax machine and**  
18 **picked it up.**  
19 Q. I see on the third page of this message  
20 confirmation, it says Marybeth's office. Do you know  
21 what Marybeth's office is?  
22 **A. No, sir. Somewhere in Wilmington Hospital,**  
23 **medical records or something.**  
24 Q. And this note, the note states, "Miss Hestal has

12 (Pages 42 to 45)

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1 been scheduled for outpatient surgery on 4/29/04 at  
2 Wilmington Hospital. Please contact Surgical Services at  
3 428-4413 if any questions."  
4 **A. Yes.**  
5 Q. And it's signed by Jonathan Kraut, M.D.?  
6 **A. Yes.**  
7 Q. Did you provide any other documentation to anyone  
8 at EDS prior to going out on medical leave other than  
9 what's contained in this Exhibit E?  
10 **A. No.**  
11 Q. Now, at the time you went out, Cigna had replaced  
12 MetLife's Synchrony as the outside company overseeing  
13 FMLA and short-term disability for EDS; isn't that  
14 correct?  
15 **A. I'm not aware of that.**  
16 Q. Was there anybody at EDS in Delaware who was  
17 trained to evaluate medical information supporting a  
18 leave of absence that you are aware of?  
19 **A. I'm not sure of the question. Could you repeat**  
20 **that again, please?**  
21 Q. Sure. Was there anyone employed at EDS in  
22 Delaware who was trained to evaluate medical information  
23 that was submitted to support an FMLA leave or short-term  
24 disability leave?

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1 **A. Not to my knowledge, unless it was the supervisor**  
2 **or the managers.**  
3 Q. Were you aware of anyone who had that training at  
4 EDS in Delaware?  
5 **A. No.**  
6 Q. Were you aware whose job it was to process the  
7 medical information supporting employees' FMLA or  
8 short-term disability leave?  
9 **A. No, I wasn't aware who would take care of that.**  
10 Q. When you were at EDS, you had access to the EDS  
11 Employee Handbooks, the corporate employee handbook?  
12 **A. Access to it?**  
13 Q. Yes, you were able to get access to it if you  
14 wanted to look something up?  
15 MR. CRONIN: Object to the form of the  
16 question. You can answer it.  
17 THE WITNESS: I never had any reason to  
18 actually ask for it. So I don't know if I was able or  
19 not to obtain it if I needed it. I never had need to ask  
20 for it.  
21 BY MR. PIATAK:  
22 Q. Do you know if it was available on-line through  
23 an intranet or something like that?  
24 **A. No, I'm not aware.**

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1 Q. Do you know whether there were physical copies  
2 located at the facility?  
3 **A. No, I'm not aware of any.**  
4 **(Lipscomb Deposition Exhibit No. F,**  
5 **Disability Benefits Overview and FMLA from Employee**  
6 **Handbook, was marked for identification.)**  
7 **BY MR. PIATAK:**  
8 Q. You have been handed what's been marked as  
9 Exhibit F. This is from the EDS Employee Handbook. If  
10 you can turn to the second page there, the fifth  
11 paragraph down.  
12 MR. CRONIN: I want to object to the form of  
13 the question when I get a chance.  
14 Q. Of course. It states, "Any medical documentation  
15 should be submitted directly to Cigna Ability Returns for  
16 its review." Do you see that language?  
17 **A. No. Five paragraphs down?**  
18 Q. Yeah. Maybe I miscounted. There is a paragraph  
19 beginning, "It is your responsibility to furnish the  
20 necessary information." Do you see that?  
21 **A. Yes.**  
22 Q. In that paragraph it reads as well, "Any medical  
23 documentation should be submitted directly to Cigna  
24 Ability Returns for its review." Do you see that?

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1 **A. Yes.**  
2 **(Lipscomb Deposition Exhibit No. G, Letter**  
3 **from Cigna Group Insurance dated April 21, 2004, was**  
4 **marked for identification.)**  
5 **BY MR. PIATAK:**  
6 Q. Hestal, I've handed you what's been marked as  
7 Exhibit G. This is a letter to you dated April 21st,  
8 2004, from Cigna. And it's addressed to you at the 2nd  
9 Street address that you had at that time, right?  
10 **A. Yes.**  
11 Q. And this letter acknowledges your request for  
12 FMLA leave. Do you see that in the first paragraph?  
13 **A. Yes.**  
14 Q. And did Tracy Eddy set up this leave request for  
15 you?  
16 **A. Yes.**  
17 Q. And that's the same that it had been in 2003 that  
18 we've already discussed?  
19 **A. Yes.**  
20 Q. And the person, the entity evaluating the leave  
21 request was Cigna?  
22 **A. I don't understand.**  
23 Q. This letter is from Cigna Group Insurance.  
24 **A. Okay.**

13 (Pages 46 to 49)

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1 Q. Do you see that?  
2 **A. Yes.**  
3 Q. And they are the ones who were evaluating your  
4 leave request?  
5 **A. Yes.**  
6 Q. And it states in there that, in that second  
7 paragraph, "You will not be required to submit separate  
8 FMLA medical certification provided your claim for  
9 short-term disability benefits and/or Workers'  
10 Compensation claim under your company's plan is  
11 approved." Do you see that language?  
12 **A. Yes, I do.**  
13 Q. So if your short-term disability claim was  
14 approved, there would be no need to submit any medical  
15 certification for FMLA.  
16 **A. Are you asking me a question, sir?**  
17 Q. Yes. And then this document states that if you  
18 were awarded short-term disability leave, you would not  
19 be required to submit separate FMLA medical  
20 certification.  
21 **A. That's what it says here.**  
22 Q. And this letter was sent to you?  
23 **A. I didn't receive this letter though.**  
24 Q. But it's addressed to your correct address at the

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1 Exhibit H. This is also a letter to you from Cigna. And  
2 this is addressed to your current address at the time?  
3 **A. Yes.**  
4 Q. And what action did you take as a result of this  
5 letter?  
6 **A. I don't recall getting this letter. I think if I**  
7 **recall right, this is, I think, came after. This was**  
8 **around the time that I had called them to -- no, that's**  
9 **not, no, that's not right. I'm sorry. I don't remember**  
10 **this letter.**  
11 Q. Do you know for a fact that you didn't receive it  
12 or you just don't remember receiving it?  
13 **A. I don't remember if I received it or if I didn't.**  
14 **So I don't want to say I did and I didn't and I didn't**  
15 **and I did.**  
16 Q. With respect to the prior Exhibit G, also you  
17 don't remember receiving that?  
18 **A. This I know I didn't receive. This sounds**  
19 **familiar, but I'm not sure where, reworded or the like.**  
20 Q. And Exhibit H, first paragraph acknowledges that  
21 you have applied for short-term disability. Do you see  
22 that?  
23 **A. Yes.**  
24 Q. And you knew that if you were granted short-term

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1 time?  
2 **A. Yes, it is.**  
3 Q. And this letter also states, "If, for any reason,  
4 your short-term disability or Workers' Compensation claim  
5 is not approved, we will provide you with the  
6 Certification of Healthcare Provider Statement to be  
7 completed by you and the attending healthcare provider to  
8 certify your leave under FMLA." Do you see that  
9 language?  
10 **A. Yes, I do.**  
11 Q. "And a final determination will be based on the  
12 medical information outlined by the attending healthcare  
13 provider." Do you see that?  
14 **A. Yes.**  
15 Q. And as we discussed earlier, if received a  
16 request for medical information, as a responsible  
17 employee, you would take care to see to it that it was  
18 fulfilled?  
19 **A. Yes.**  
20 **(Lipscomb Deposition Exhibit No. H, Letter**  
21 **from Cigna Group Insurance dated May 4, 2004, was marked**  
22 **for identification.)**  
23 **BY MR. PIATAK:**  
24 Q. Hestal, I've handed you what has been marked as

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1 disability, you wouldn't have to provide FMLA medical  
2 certification, right?  
3 **A. I would believe so. But I didn't, actually, know**  
4 **which one was being filed for. I made Tracy Eddy aware.**  
5 **She said she would take care of it. I don't know which**  
6 **one was filed first, second or whether they both were**  
7 **filed. So I couldn't really say that, yes, I applied for**  
8 **it because I don't know which was done first or to that**  
9 **nature.**  
10 Q. When did Tracy tell you she would take care of  
11 it?  
12 **A. She told me that when I let her know that I was**  
13 **having the surgery.**  
14 Q. Did she tell you anything else besides that she  
15 would take care of it?  
16 **A. No, she didn't.**  
17 Q. And the second paragraph, "In order to make a  
18 determination about short-term disability benefits, we  
19 must obtain medical information to verify your diagnosis  
20 and current functional abilities and your current  
21 treatment plan. We are asking information from  
22 Dr. Jonathan Kraut. In the event we are unable to obtain  
23 this medical information, it is your responsibility to  
24 provide us with the required information." Do you see

14 (Pages 50 to 53)

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1 Q. Do you know whether you received it and don't  
2 remember or you are certain that you didn't receive it?  
3 **A. I don't remember receiving it at all.**  
4 Q. Is it possible that you did and you just don't  
5 remember?  
6 MR. CRONIN: Object to the form.  
7 **A. I don't remember receiving the document.**  
8 Q. This letter indicated that your claim for  
9 short-term disability had been denied, correct?  
10 **A. That's what it states.**  
11 Q. And that your doctor was supposed to complete the  
12 attached Certification of Healthcare Providers Statement?  
13 **A. That's what it says.**  
14 Q. And that failure to provide the medical  
15 certification within 15 days of the date of this letter  
16 may result in denial of FMLA protection, correct?  
17 **A. Yes, that's what it says.**  
18 Q. And if your absences were not covered or  
19 protected by the FMLA, they could be unexcused under EDS  
20 policy, correct?  
21 **A. Excuse me?**  
22 Q. If your absences were not covered by the FMLA,  
23 they could be considered unexcused under the EDS policy,  
24 correct?

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1 MR. CRONIN: Object to the form.  
2 **A. That's on here?**  
3 Q. Yeah, that's my question.  
4 **A. I'm sorry. I didn't see that written.**  
5 Q. My question is: If your absences were not  
6 covered by the FMLA, they could be considered unexcused  
7 under the EDS policy, correct?  
8 MR. CRONIN: Object to form.  
9 **A. I didn't consider them unexcused because I did go**  
10 **and I did have the surgery and the process was supposed**  
11 **to be taken care of. And I never received anything that**  
12 **I had to leave home and go to take to the hospital to**  
13 **have filled out. Because if I did, I would have taken**  
14 **them and had them filled out. No one made me aware that**  
15 **any papers were going to come to me and I was going to**  
16 **have to have them filled out.**  
17 Q. We have already discussed that you were aware  
18 under the FMLA policy of the EDS attendance policy that  
19 FMLA absences would be considered excused.  
20 MR. CRONIN: Object to the form.  
21 **A. If FMLA, that they would be excused?**  
22 Q. Right.  
23 MR. CRONIN: I think now is probably a good  
24 time to state an objection I have to this line of

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1 questioning that I have to this so-called EDS policy.  
2 And specifically -- if you prefer this outside the  
3 presence of the witness, that's fine.  
4 MR. PIATAK: Sure.  
5 THE WITNESS: Sure. I will get some more  
6 water.  
7 (The witness left the room.)  
8 MR. CRONIN: We have been presented with  
9 certain exhibits today, specifically Exhibit B, Exhibit  
10 C, Exhibit D, all of which were not identified in the  
11 defendant's initial disclosures of which were served last  
12 fall. They were served in October. And, specifically,  
13 several documents were identified in response to those  
14 initial disclosures identifying with great specificity  
15 certain documents which would be relied upon by the  
16 defendant.  
17 And I do note, in particular, that these  
18 three documents all bear a fax line from July of 2005.  
19 And with the questioning today, it seems readily apparent  
20 to me that the defendant is relying on the existence of  
21 this attendance guidelines which has been marked as  
22 Lipscomb C. And it's argued that this document, to the  
23 extent that it's being relied upon by the defendant,  
24 should have been identified in response to the initial

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1 disclosures which were served about three months later  
2 and which were requested as part of a request for  
3 production.  
4 I would also note that what was further  
5 identified in the initial disclosures was Miss Lipscomb's  
6 personnel file, which seems logically to me as part of  
7 that would include a Handbook Acknowledgment Form. And I  
8 note also that that's dated December 12, 2003, and  
9 apparently was also subject to a fax of August 15, 2005.  
10 But that was also not produced pursuant to our request  
11 for production.  
12 So to the extent that we are going to have  
13 continuing questions with respect to Miss Lipscomb's  
14 knowledge about these policies, we object to that because  
15 they should have been produced already in response to our  
16 request for production.  
17 MR. PIATAK: Okay. Do you want to break for  
18 lunch now?  
19 (Thereupon, a lunch recess was had.)  
20 MR. PIATAK: Mr. Cronin has asked to adjourn  
21 the deposition today and I agreed to that.  
22 MR. CRONIN: And just to explain my  
23 reasoning, I've taken a little time to think more about  
24 the documents that were produced today for the first

16 (Pages 58 to 61)

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

HESTAL LIPSCOMB, )  
)  
Plaintiff, )  
) Civil Action  
v. ) No. 05-477-SLR  
)  
ELECTRONIC DATA SYSTEMS )  
CORPORATION, )  
)  
Defendant. )

Continued deposition of HESTAL LIPSCOMB taken pursuant to notice at the law offices of Richards, Layton & Finger, One Rodney Square, Wilmington, Delaware, beginning at 1:32 p.m. on Tuesday, April 11, 2006, before Eleanor J. Schwandt, Registered Merit Reporter and Notary Public.

APPEARANCES:

LAURENCE V. CRONIN, ESQ.  
SMITH, KATZENSTEIN & FURLOW  
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Wilmington, Delaware 19801  
for the Plaintiff

THOMAS J. PIATAK, ESQ.  
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for the Defendant

ALSO PRESENT: LANCE ROGERS, EDS

WILCOX & FETZER  
1330 King Street - Wilmington, Delaware 19801  
(302) 655-0477

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1 MR. PIATAK: Before the deposition I gave to  
2 Mr. Cronin the documents 2 and 3 identified in our  
3 privilege log, and some additional documents responsive  
4 to interrogatory number 17, and I also gave him, at his  
5 request, an opportunity to confer with his client about  
6 those documents, and these are being produced subject to  
7 the agreement that there would be no argument that EDS  
8 had waived any privilege by producing them. Is that  
9 correct, Mr. Cronin?  
10 MR. CRONIN: That's correct.  
11 (Hestal Lipscomb, having been previously  
12 duly sworn, was examined and testified further as  
13 follows:)  
14 CONTINUED EXAMINATION  
15 BY MR. PIATAK:  
16 Q. Good afternoon, Hestal.  
17 A. Good afternoon.  
18 Q. You understand you are still under oath from the  
19 last time we met?  
20 A. Yes, sir.  
21 Q. Same ground rules apply. I'll just remind you  
22 quickly, you need to answer orally. Nods of the head,  
23 mm-hmm, natural, it happens. We all talk that way. But  
24 it makes it hard for the court reporter, so try to avoid

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1 that.  
2 Also, wait until or try to wait until I'm  
3 done with my question before you give your answer, and I  
4 will try to wait until you are done with your answer  
5 before I go on to my next question. Again, that makes it  
6 easier for the court reporter.  
7 And finally, I will assume if you answer any  
8 question that you have understood my question. Do you  
9 remember all that from last time?  
10 A. Yes.  
11 Q. And again, if you need a break at any time, just  
12 let me know. Is that understood?  
13 A. Yes.  
14 Q. Hestal, has there been any change in your  
15 employment since the last time we met?  
16 A. No.  
17 Q. So you are still working at the Delaware  
18 psychiatric hospital?  
19 A. Yes.  
20 Q. Are you doing any work in the document production  
21 facility that we talked about last time?  
22 A. No.  
23 (Defendant's Deposition Exhibit K was marked  
24 for identification.)

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1 Q. Hestal, I've handed you what has been marked as  
2 Exhibit K. Do you remember receiving this document?  
3 A. No, I don't.  
4 Q. Do you know whether you received it and you don't  
5 remember receiving it, or do you know for a fact that you  
6 did not receive that?  
7 A. I don't recall.  
8 Q. Okay. But this is addressed to your correct  
9 address at the time?  
10 A. Yes.  
11 Q. And the letter indicates that Cigna at that date  
12 had not received, these are the items that are checked,  
13 confirmation of the surgical procedure you underwent,  
14 medical information from Dr. Kraut to support your time  
15 off work, and your signed authorization to release  
16 medical information, inclusive of proof of loss form,  
17 correct?  
18 A. Yes.  
19 Q. And the letter also indicates that Cigna had  
20 attempted to contact you by phone on May 27th and June  
21 the 1st. Correct?  
22 A. Yes, it does.  
23 Q. What action did you take as a result of this  
24 letter?

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1 MR. CRONIN: Object to the form. You can  
2 answer.  
3 Q. What action, if any, did you take as a result of  
4 this letter?  
5 MR. CRONIN: Object to the form.  
6 A. There wasn't any action taken, to my knowledge.  
7 I don't recall receiving this letter.  
8 Q. Okay. That's fine. Did you ever speak to anyone  
9 at Cigna about your request for short-term disability or  
10 FMLA leave in 2004?  
11 A. No.  
12 Q. And do you have facts or evidence showing that at  
13 the time this letter was sent on June 2nd, Cigna had  
14 received information regarding confirmation of the  
15 surgical procedure you underwent, medical information  
16 from Dr. Kraut to support your time off work, or your  
17 signed authorization to release medical information and  
18 proof of loss form?  
19 MR. CRONIN: Object to the form.  
20 A. Could you repeat the beginning of that one?  
21 Q. Oh, sure.  
22 A. You are saying -- I lost part of it.  
23 Q. Of course, that's fine. Do you have any facts or  
24 evidence showing that as of June 2nd, the date of

2 (Pages 67 to 70)

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1 Exhibit K, Cigna had, in fact, received confirmation of  
2 the surgical procedure you underwent?  
3 **A. I didn't receive anything personal, personally,**  
4 **faxed to me stating that they received it.**  
5 Q. Do you have any facts or evidence showing that as  
6 of June the 2nd Cigna had received medical information  
7 from Dr. Kraut supporting your time off of work?  
8 **A. No, not personally.**  
9 Q. Okay. And do you have any facts or evidence  
10 showing that as of June the 2nd Cigna had received signed  
11 authorization to release medical information and proof of  
12 loss form?  
13 **A. No. The only thing that I had with anything in**  
14 **regards to this is when Barbara Jackson spoke to me and**  
15 **said something about them not receiving it and I**  
16 **contacted the hospital. They in turn faxed -- said that**  
17 **they faxed the information over to Cigna.**  
18 Q. Okay.  
19 **A. And that was the only thing that I know in**  
20 **regards to anything being faxed to them.**  
21 Q. Okay. And do you remember who you spoke with at  
22 the hospital?  
23 **A. Oh, it was a nurse in the surgical department. I**  
24 **don't recall her name.**

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1 Q. Okay. There may be some documents later on that  
2 have some names. And this conversation occurred after  
3 Barbara Jackson told you that Cigna had not received the  
4 information, correct?  
5 **A. Yes.**  
6 Q. And what the nurse told you was that they had  
7 already previously faxed to Cigna information?  
8 **A. Yes, they did, and that she would re-fax the**  
9 **information because I requested it.**  
10 Q. And that conversation is the only information you  
11 had about anything being sent to Cigna, that's correct?  
12 **A. Yes.**  
13 **(Defendant's Exhibit L was marked for**  
14 **identification.)**  
15 Q. Hestal, you have been handed what has been marked  
16 as Exhibit L. This is a letter from Cigna dated June  
17 17th, 2004. This is addressed to your correct address at  
18 the time, right?  
19 **A. Yes, it is.**  
20 Q. And this letter stated your request for FMLA  
21 leave was denied as Cigna had not received a completed  
22 medical certification. Is that --  
23 **A. I'm sorry. Yes, it does.**  
24 Q. Okay. And the letter stated, "If you still want

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1 your leave considered for FMLA protection, please submit  
2 a Medical Certification within 15 days." Do you see that  
3 language?  
4 **A. Yes.**  
5 Q. What action did you take as a result of this  
6 letter?  
7 **A. I didn't take any action as a result of this**  
8 **letter. I seen this letter after I was terminated.**  
9 **There was no action to be taken then.**  
10 Q. Okay. Do you recall whether you received this  
11 letter at the time?  
12 **A. Barbara Jackson showed it to me in the office on**  
13 **the day of the termination. She showed me this letter.**  
14 Q. Okay. Do you recall whether you also received a  
15 copy in the mail?  
16 **A. I did receive a copy, but it was after I was**  
17 **terminated.**  
18 Q. You received a copy from whom after you were  
19 terminated?  
20 **A. I would believe Cigna.**  
21 Q. Do you recall whether you also received a copy of  
22 this letter in the mail in the June 2004 time frame?  
23 **A. No, sir.**  
24 Q. Is it possible that you received one and you just

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1 don't recall?  
2 **A. I don't recall receiving one in June. I did**  
3 **receive the letter in July, but it was after I was**  
4 **terminated.**  
5 Q. Did you return to work after your April 2004  
6 surgery?  
7 **A. Yes, I did.**  
8 Q. When did you return to work?  
9 **A. I don't recall. I believe it was the 14th, 14th,**  
10 **15th, something around there.**  
11 Q. Could it have been --  
12 **A. Of April.**  
13 Q. Of April or May?  
14 **A. I mean, I'm sorry, that was April -- wrong year.**  
15 **It was May 17th when I returned.**  
16 Q. Of 2004?  
17 **A. And '4.**  
18 Q. Okay. Did you speak to anyone at EDS about your  
19 absence from work when you returned?  
20 **A. No, I didn't. I spoke -- only thing I had did**  
21 **was give my return to work slip to Tracey Eaddy.**  
22 Q. And other than giving that return to work slip to  
23 Tracey, you didn't have any conversation with anyone at  
24 EDS about your absence?

3 (Pages 71 to 74)

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1 that I actually went to the hospital, after I was  
2 terminated, and went in my record to find out whether or  
3 not -- and this is the form that was faxed, with a fax  
4 cover sheet, stating it was faxed to Cigna.  
5 Q. And that form is Exhibit M?  
6 A. Yes, Exhibit M.  
7 Q. You will see that Exhibit M says in bold print,  
8 "Please send copies of all current test results and  
9 office notes from April 2004 through the present." Do  
10 you see that language?  
11 A. Yes.  
12 Q. Do you have any facts or evidence showing that  
13 you or anyone acting on your behalf had sent to Cigna  
14 copies of all current test results and office notes from  
15 April 2004 through the present?  
16 A. I only know what I was told by the hospital that  
17 was sent.  
18 Q. Okay. And what you were told by the hospital was  
19 sent was what has been marked as Exhibit N?  
20 A. Yes.  
21 Q. And that's a one-page document?  
22 A. Yes.  
23 (Defendant's Exhibit O was marked for  
24 identification.)

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1 Q. Hestal, I've handed you what has been marked as  
2 Exhibit O. This was produced to us by your attorney.  
3 When did you first see this document?  
4 A. When I went to the hospital and asked -- signed  
5 out my chart, my records out of the chart so that I could  
6 find information to take with me to unemployment.  
7 Q. That was after you were terminated by EDS?  
8 A. Yes.  
9 Q. That was in preparation for your unemployment  
10 hearing?  
11 A. Yes, sir.  
12 Q. This document indicates that it was faxed to you  
13 on May 20th, 2004. Do you see that?  
14 A. Yes.  
15 Q. And the number given is 454-1074?  
16 A. Yes.  
17 Q. Do you know what that number is?  
18 A. It is a number at EDS.  
19 Q. And it indicates that what was being faxed was  
20 one page, plus a cover?  
21 A. Yes.  
22 Q. And the message says "Cigna form"?  
23 A. Yes.  
24 Q. Did the hospital fax a Cigna form to you at EDS

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1 on May 20 of 2004?  
2 A. Not to my knowledge. I never received anything.  
3 When it came out on the fax no one where it came out of  
4 the fax machines called me or brought it to me or  
5 anything like that. I never personally received it.  
6 Q. So this is a hospital fax transmission form  
7 indicating that one page, plus the cover, had been faxed  
8 to you at EDS on 5/20/2004, but you never received it at  
9 the time?  
10 A. No.  
11 Q. Do you remember asking the hospital to fax to you  
12 a Cigna form at that time, in May of 2004?  
13 A. No, I don't.  
14 Q. Do you remember having discussions with anyone at  
15 the hospital in May of 2004 concerning your request for  
16 short-term disability or FMLA leave?  
17 A. With someone in the hospital?  
18 Q. With someone at the hospital, correct.  
19 A. No.  
20 Q. Does this document, this document meaning  
21 Exhibit O, refresh your recollection that you were aware  
22 in May of 2004 that Cigna had denied your request for  
23 short-term disability?  
24 A. This form doesn't state that, and I never

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1 received, received it, so I don't -- I'm not aware of  
2 anything as far as this particular paper is concerned,  
3 because I never seen it until I got it out of my chart.  
4 Q. Okay.  
5 (Defendant's Exhibit P was marked for  
6 identification.)  
7 Q. Hestal, you have been handed what has been marked  
8 as Exhibit P. It is two pages, the first Bates labeled  
9 HL-087 and the second Bates labeled HL-085. HL-087 is a  
10 fax cover sheet from Christiana Care Health Services; is  
11 that correct?  
12 A. Yes.  
13 Q. And that's similar to the fax cover sheet that we  
14 had already looked at as Exhibit O; is that correct?  
15 A. Yes.  
16 Q. And this indicates that there is one page, plus  
17 cover, transmitted to Cigna on June 21st, 2004, correct?  
18 A. Yes.  
19 Q. And it says from Shazi Zodeh. Do you see where  
20 that is checked?  
21 A. Yes, I do.  
22 Q. And was that the nurse that you spoke with?  
23 A. Yes, it is.  
24 Q. At Christiana Care Health Services?

7 (Pages 87 to 90)

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1 **A. Yes.**  
2 Q. Then the other page is a fax transmission sheet  
3 stating at the top "Message Confirmation"?  
4 **A. Yes.**  
5 Q. Do you know what the document was, the one-page  
6 document that accompanied this fax cover sheet marked as  
7 Exhibit P?  
8 **A. It would be -- it would have been the, what is**  
9 **your Exhibit N.**  
10 Q. Okay. And Exhibit N was not the Certification of  
11 Healthcare Provider statement, correct?  
12 **A. Excuse me?**  
13 MR. CRONIN: Object.  
14 Q. Exhibit N is not the same document as the  
15 Certification of Healthcare Provider statement, correct?  
16 MR. CRONIN: Object to the form.  
17 **A. Is that what you showed me in the other book?**  
18 Q. Yes.  
19 **A. No, it is not the same as that.**  
20 Q. And the message confirmation sheet refers, says  
21 "Mary Beth's office" on it. Do you know what that refers  
22 to?  
23 **A. No, I don't.**  
24 Q. At any point did you directly, yourself, send any

1 showing fax transmission information confirming it was  
2 sent to Cigna?  
3 MR. CRONIN: Object to the form.  
4 **A. Other than the forms that I picked up myself out**  
5 **of my, my hospital records, the lawyer, you. I don't**  
6 **know who else might have it.**  
7 Q. When you went to your medical forms to prepare  
8 for your unemployment compensation hearing, the fax  
9 transmission sheet that you found was what is marked as  
10 Exhibit P, correct?  
11 **A. Yes, it is.**  
12 Q. You are not aware of any document being faxed to  
13 Cigna after June 21st, 2004, correct?  
14 **A. Not to my knowledge.**  
15 Q. Neither of the 800 numbers contained in Exhibit P  
16 are the same as the 800 number found on the cover of  
17 Exhibit H; is that correct?  
18 **A. No, it is not the same number.**  
19 Q. If you would look at the second page of Exhibit P  
20 where there are two 800 numbers there.  
21 **A. No, they are not the same.**  
22 Q. Okay. So the fax numbers found on Exhibit P are  
23 not the same as the fax number found on Exhibit H?  
24 **A. Correct.**

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1 medical information to Cigna?  
2 **A. No.**  
3 Q. Do you know why two different 800 numbers appear  
4 on the message confirmation sheet?  
5 **A. No, I don't. It came from Christiana Hospital.**  
6 **I have no dealings with their things.**  
7 Q. I just asked you if you knew why.  
8 **A. No, I don't.**  
9 Q. Do you have a copy of any document that was sent  
10 along with the fax cover sheet that has on it fax  
11 transmission information showing that it was actually  
12 sent to Cigna?  
13 **A. Just the --**  
14 MR. CRONIN: Object to the form. You can  
15 answer.  
16 **A. Just the same thing that you have here.**  
17 Q. The same thing meaning Exhibit P?  
18 **A. Exhibit P, yes. I'm sorry.**  
19 Q. Other than Exhibit P, you are not aware of any  
20 document that was faxed to Cigna that has fax  
21 transmission data on it showing it was faxed to Cigna?  
22 **A. No.**  
23 Q. Do you know of anyone else who has a copy of any  
24 document that was sent along with this fax cover sheet

1 **(Defendant's Exhibit Q was marked for**  
2 **identification.)**  
3 Q. Hestal, I've handed you Exhibit Q. These are  
4 documents that we received from your attorney in  
5 connection with the case. I believe both documents have  
6 also been previously marked. If you would look at the  
7 second page of Exhibit Q. That's the document that you  
8 believe was sent to Cigna on June the 21st, correct?  
9 **A. Yes.**  
10 Q. And that's a copy of the actual document you  
11 retrieved from your medical file in connection with your  
12 unemployment compensation hearing?  
13 **A. Yes.**  
14 Q. Is there any fax transmission information on the  
15 second page of Exhibit Q indicating that it was sent to  
16 Cigna on June 21st?  
17 **A. Excuse me?**  
18 Q. Sure. Is there any fax transmission information  
19 on the second page of Exhibit P indicating that it was  
20 sent to Cigna on June 21st, 2004?  
21 **A. Exhibit P or Exhibit --**  
22 Q. Q, I'm sorry. Exhibit Q, the second page of  
23 Exhibit Q?  
24 **A. The second page of Exhibit Q has a fax number on**

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1 **it that's an 800 number for Charlene Crowder. I guess**  
2 **that's where it is supposed to be sent back to, right**  
3 **here.**

4 Q. Right. Is there any fax transmission information  
5 it was sent back to Charlene Crowder at that number?

6 **A. Not on this particular page.**

7 Q. And this page is the copy of the document you  
8 retrieved from your medical files?

9 **A. Yes, sir.**

10 Q. Other than the second page of Exhibit Q, are you  
11 aware of any test results or office notes from 2004 to  
12 the present that was sent to Cigna on your behalf?

13 **A. No, no, I'm not.**

14 Q. Other than the second page of Exhibit Q, are you  
15 aware of any Certification of Healthcare Provider, such  
16 as found in Exhibit J, that was sent to Cigna on your  
17 behalf?

18 **A. Only thing I am aware of is what they said they**  
19 **received at the hospital, and that was this, and this is**  
20 **what they said they filled out and they sent back.**

21 Q. Hestal, you took time off of work at EDS for  
22 surgery in 2003. Do you remember that?

23 **A. Yes, I do.**

24 Q. Did you take time off once or twice for that?

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1 **A. Once.**

2 Q. And you also took time off work for surgery in  
3 2004 at EDS?

4 **A. Yes.**

5 Q. Was there anyone there who made any disparaging  
6 comments about your taking time off for surgery on either  
7 occasion?

8 **A. No.**

9 Q. Is there anyone at EDS who ever made any  
10 disparaging comments about your health?

11 **A. No.**

12 Q. Are you aware that other EDS employees also took  
13 time off for medical reasons while you worked there?

14 **A. I have -- I believe there were people that took**  
15 **off for whatever, various reasons. I wasn't really into**  
16 **everyone's business, so I don't know who was out, for**  
17 **what reason they were out.**

18 Q. Are you aware of any employee at EDS being  
19 terminated as a result of taking time off for medical  
20 reasons?

21 **A. No, I'm not aware of anyone.**

22 Q. And you indicated Barb Jackson came to you twice  
23 and urged you to get medical documentation into Cigna,  
24 correct?

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1 **A. Yes.**

2 Q. Did Barb Jackson ever come to you two times and  
3 tell you to do anything else where you did not do what  
4 she asked you to do?

5 MR. CRONIN: Object to the form. You can  
6 answer.

7 **A. No, I didn't. No, she didn't, I meant.**

8 Q. Are you aware of Barb Jackson going to any other  
9 employee two times and telling them to do something and  
10 it was not done?

11 MR. CRONIN: Object to the form.

12 **A. No, I'm not aware of any conversation with her**  
13 **and any other employee.**

14 Q. At EDS when Barb Jackson asked something to get  
15 done, employees got it done; is that correct?

16 **A. I would believe so. Everyone is their own**  
17 **individual. I know what I did when she asked me to do**  
18 **it.**

19 Q. Right. When she asked you to do something, you  
20 got it done?

21 **A. That's what I did. I made the phone call which**  
22 **was necessary to try to get the documents to Cigna as she**  
23 **requested.**

24 Q. And generally speaking, leaving aside that

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1 instance when Barb Jackson asked you to do something, you  
2 would take care to get it done?

3 **A. Yes, if it was something pertaining to their job**  
4 **or whatever, yes, I would.**

5 Q. Did you receive your last EDS paycheck through  
6 the mail?

7 **A. I don't believe it came through the mail. I**  
8 **believe it actually went direct deposit, like they had**  
9 **been doing for the entire time I was working there.**

10 Q. Okay. Are you aware of any items sent to you  
11 through the mail in the period of April through June of  
12 2004 that you did not receive?

13 **A. When, sir?**

14 Q. Sure. Are you aware of any item sent to you  
15 through the mail in the period of April through June 2004  
16 that you did not receive?

17 **A. Only the document that you presented to me**  
18 **before, which I don't know the letters, and the thing,**  
19 **letter that Barb Jackson showed me, I got that after the**  
20 **fact.**

21 Q. Did you contact the post office concerning  
22 problems receiving mail at your 3111 West 2nd Street  
23 address?

24 **A. Did I contact the post office?**

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1 **A. Okay. It says, "To expedite processing of your**  
2 **claim, please sign and fax the enclosed disclosure,**  
3 **authorization and EDS reimbursement agreement to us as**  
4 **soon as possible at the 860-371-3511."**

5 Q. Okay. Did you read that second seven digits  
6 correctly?

7 **A. 3511.**

8 Q. The second set.

9 **A. Oh.**

10 Q. Why don't you re-read the whole number again.

11 **A. I'm sorry. 860-731-3511.**

12 Q. Okay. Now, let's take a look at Exhibit P. This  
13 is another document that the counsel showed you, correct?

14 **A. Yes, sir.**

15 Q. Now, he also pointed out the second page of this  
16 document as being a confirmation of a fax sheet, correct?

17 **A. Yes.**

18 Q. All right. And his question of you, he asked  
19 whether the number, the phone number, the fax number on  
20 Lipscomb H appears anywhere on this fax confirmation  
21 sheet. Do you remember that question?

22 **A. Yes, sir.**

23 Q. And is that number contained here as any of the  
24 numbers indicated on the confirmation?

1 on Exhibit N?

2 **A. Yes, it is. It is up underneath Charlene Crowder**  
3 **department's fax number.**

4 Q. Any place else on the form? How about the bottom  
5 right-hand corner?

6 **A. Yes, it is also on the bottom of the page,**  
7 **right-hand.**

8 Q. All right. And who is this fax, which is  
9 directed to a Dr. Emily Jane Penman, purported to be  
10 from?

11 **A. It is from Charlene Crowder.**

12 Q. Okay. Charlene Crowder at Cigna?

13 **A. At Cigna.**

14 Q. Apparently the same Charlene Crowder that's  
15 referenced in Lipscomb Exhibit H?

16 **A. Yes, sir.**

17 Q. So she has two different fax numbers?

18 **A. It appears so.**

19 Q. Now, looking at the second page of Exhibit P,  
20 there is this other fax number. Do you see that other  
21 one on there that you have already -- not 7016 but the  
22 other one, 377 --

23 **A. 377.**

24 Q. -- 4286?

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1 **A. No, it isn't.**

2 Q. Are there other fax numbers?

3 **A. Yes, there is.**

4 Q. Okay. And what are those fax numbers?

5 **A. One is 1-800-377-4286.**

6 Q. Okay.

7 **A. And the other seems -- is 1-800-325-7016.**

8 Q. Okay. Now, let's take a look at Exhibit N and  
9 the first page of Exhibit P. Now, what is Exhibit N?

10 **A. Exhibit N is the form that the hospital received**  
11 **from Cigna to be filled out.**

12 Q. Okay. Was this the document you discussed with  
13 Nurse Zodeh?

14 **A. Yes, it is.**

15 Q. Okay. Now, looking on Exhibit N, the first page,  
16 does that indicate a particular fax number?

17 **A. Yes, it does.**

18 Q. What is the number?

19 **A. 1-800-325-7016.**

20 Q. And that's the same number or one of the two  
21 numbers that shows up on the second page of that, being  
22 the fax confirmation sheet, correct?

23 **A. Yes, it is.**

24 Q. Now, do you see the number 800-325-7016 anywhere

1 **A. Yes.**

2 Q. Do you know where that one is?

3 **A. No, I don't, sir.**

4 MR. CRONIN: Okay. I have no further  
5 questions.

6 MR. PIATAK: I have nothing further at this  
7 time. Do you want to advise her on waiver?

8 MR. CRONIN: We are going to read and sign.  
9 (Proceedings conclude at 3:22 p.m.)

10 I N D E X

11 DEPONENT: HESTAL LIPSCOMB	PAGE
12 Examination by Mr. Piatak	67
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#### EXHIBITS

14 DEFENDANT'S DEPOSITION EXHIBITS	MARKED
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15 K - 6/2/04 Cigna to Lipscomb letter	68
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16 L - 6/17/04 Cigna to Lipscomb letter	72
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17 M - 5/10/04 Dr. Kraut note	75
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18 N - 5/7/04 Crowder to Penman fax	86
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19 O - 5/20/04 To: Lipscomb fax, "Cigna form"	87
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20 P - 6/21/04 Zodeh to Cigna fax	90
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21 Q - 6/21/04 Zodeh to Cigna fax	94
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22 ERRATA SHEET/DEPONENT'S SIGNATURE	PAGE 119
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24 CERTIFICATE OF REPORTER	PAGE 120
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